

E-FILED on 8/29/06

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

KENNETH HOLCOMB,

Plaintiff,

v.

DIRECTOR OF CORRECTIONS, CAL
TERHUNE, et al.

Defendants.

No. C-03-02765 RMW

ORDER GRANTING MOTION FOR LEAVE
TO FILE A MOTION FOR
RECONSIDERATION AND SETTING
BRIEFING SCHEDULE


[Re Docket No. 36]

On March 31, 2005 the court issued an order denying defendant's motion to dismiss based on the holding in *Ngo v. Woodford*, 403 F.3d 620 (9th Cir. 2005). Defendant's motion to dismiss rested on the contention that plaintiff's action is barred for failure to exhaust administrative remedies required by 42 U.S.C. § 1997e(a). In its motion to dismiss, defendant argued that plaintiff's administrative appeal is incapable of exhaustion because it was rejected as untimely. In *Ngo*, the Ninth Circuit held that the Prison Litigation Reform Act of 1995's ("PLRA") exhaustion requirement does not bar subsequent judicial consideration of an exhausted administrative appeal that was denied on state procedural grounds (timeliness). Accordingly, the court denied defendant's motion to dismiss.

On June 22, 2006 the United States Supreme Court reversed the Ninth Circuit's holding in *Ngo. Woodford v. Ngo*, 126 S. Ct. 2378 (2006). Defendant now seeks leave to file a motion for reconsideration of the court's March 31, 2005 Order pursuant to Civil Local Rule 7-9(b)(2). In light of the Supreme Court's June 22, 2006 ruling, the court finds reconsideration proper. The court grants the motion and sets the following briefing schedule:

Plaintiff's opposition shall be filed by:	Friday, September 29, 2006
Defendant's reply shall be filed by:	Friday, October 6, 2006
A hearing, if any, shall take place:	Friday, October 20, 2006 at 9:00 a.m.

DATED: 8/28/06


 RONALD M. WHYTE
 United States District Judge

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15 **Dated:** 8/29/06

16 SPT
Chambers of Judge Whyte